

Ombudsman's Determination

Applicant	Mr Y
Scheme	The Halsey (Builders) Ltd Pension Scheme (the Scheme)
Respondents	B&CE Halsey (Builders) Ltd (the Employer)

Outcome

1. Mr Y's complaint is upheld and to put matters right the Employer shall pay Mr Y a further £500 for the additional distress he has suffered because of its inaction. It will provide B&CE with all the necessary information it requires to enable it to carry out a full and accurate loss/gain calculation.
2. If the calculation shows a loss the Employer and B&CE shall between them pay into Mr Y's pension account the sum required to bring his unit holding to the correct level in such proportion as they agree between them.

Complaint summary

3. Mr Y's complaint, against the Employer and B&CE, is that:-
 - The Employer has not paid one year's worth of employee and employer contributions to his pension.
 - In addition, from April 2018 incorrect contributions were made to his pension.
 - He has not received compensation for the missing interest as previously agreed by the Employer.
 - B&CE failed to tell him about this and did not report it to The Pensions Regulator (**TPR**).
 - Both parties have taken too long to respond to and resolve this matter.

Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
5. Mr Y began working for the Employer in 2015 and was automatically enrolled in the Scheme which was administered by B&CE. At the time of the events complained of, B&CE also acted as the Trustee.
6. Mr Y opted out of the Scheme, but then elected to re-enrol. On 18 February 2016, he wrote to the Employer and said:

“I have been requesting since the week beginning 23rd November 2015 for you to opt me back into [the Scheme] and you have still not done so. I have now contacted [B&CE] myself ... I understand that the payments can be backdated to the date I requested to re-join but it is now 12 weeks since I asked to re-join and the longer this goes on the larger the payment will get that will be taken out of my wages in one lump sum. [B&CE] also advised me that this process should not take this long, that I should not have to make multiple requests to you to do this and that after waiting this long my next course action (sic) would be to contact The Pensions Regulator.”
7. In June 2018, Mr Y discovered that the Employer had not paid about a year’s worth of employee and employer contributions to the Scheme. He also realised that, from April 2018, the Employer had been deducting and paying the wrong employee and employer contributions.
8. As Mr Y felt the Employer was taking no notice of his requests to resolve the position, he contacted the Pensions Advisory Service’s (**TPAS**) dispute resolution function which by then had become the Early Resolution Team (**ERT**) within The Pensions Ombudsman’s Office. The ERT’s role is to try to resolve disputes through mediation before they become formal complaints.
9. In July and August 2018, the ERT corresponded with Mr Y and the Employer to try and resolve matters. As a result, the Employer started paying the correct amounts. However, the Employer later made further errors. Mr Y informed the Employer of these errors, but it did not correct them. This resulted in him being issued with an incorrect P60, showing incorrect pension deductions. The Employer also made incorrect deductions in respect of the 2019/20 tax year and, again, despite Mr Y informing both the Employer and B&CE, this went unresolved.
10. B&CE produced a statement for Mr Y which confirmed that no contributions had been paid into his pension from 1 July 2017 to 30 June 2018. Following a subsequent enquiry it told Mr Y that he had been automatically enrolled on 30 March 2018 rather than 30 March 2016. It said it would investigate this.
11. On 6 August 2018, the Employer’s accountant (**the accountant**) confirmed that it had been asked to take action to bring the pension scheme contributions up to date.

12. On 16 August 2018, Mr Y said that the Employer had taken £35.26, this being the first of his backdated payments, from his wages but had not paid any of the arrears owed by the Employer.
13. On 21 August 2018, the accountant confirmed that the total employer contribution of £150.69 due from 6 April 2018 to 9 August 2018 had been uploaded and would be taken by direct debit on 5 September 2018. It said that the total backdated amount due from Mr Y was £226.04, £141.04 of which would be taken on 5 September 2018 with the remaining £85 to be paid with the next submission.
14. With regard to the missing contributions from July 2017 onwards, the accountant said that these were waiting to be taken by direct debit on 3 September 2018. The amounts from June 2017 to April 2018 totalled £205 in employer contributions and £205 in employee contributions.
15. Regarding the fact that Mr Y had been entered into the Scheme in March 2018 rather than March 2016, the accountant said that it had been told by B&CE that this was the best way to deal with the problem of the delayed entry.
16. On 1 February 2019, Mr Y emailed B&CE. He said:

“Could you please confirm asap that no payments have been made into my account since 5/12/2018 and that there are no payments scheduled to be made. My employer has not been making contributions and [it] was given until 31/1/2019 to make the missing payments by The Pensions Ombudsman before it goes to litigation, so could you also please confirm that payments show on the account on the day that they are paid to you. Could you also please send me how much my employer and myself have each paid in since I was opted back in 24/3/2016.”
17. B&CE issued a statement the same day showing that no payments had been made into his account for the period in question.
18. On 8 February 2019, the Employer wrote to Mr Y (**the February 2019 letter**). It said that all contributions to 17 January 2019 had been paid to B&CE but were still to be allocated. It added that the wages system had been deducting more than the minimum contribution of 3% and that this would be corrected by a small reduction in the contribution which would be shown on his wages slip.
19. On 6 May 2019, Mr Y wrote to the Employer following a conversation between them on 29 April 2019. He said that the payments being deducted from his wages since the February 2019 letter were being taken from his net pay and not the gross. As a result B&CE needed to add tax relief to the payments but had not done so. He had questioned B&CE regarding this and had been told that the Employer had not informed it that the method of deducting contributions had changed. Furthermore, as the Employer had stated that it had not changed the way in which it was taking deductions, he was concerned that this meant that all the payments taken since February were incorrect as they were taken net of tax.

20. Mr Y also pointed out that his contributions should now be 5% of pay and the Employer's 3% of pay.
21. He wrote to the Employer again on 2 June 2019 as the errors to his wages for 2018/19 and 2019/20 had still not been corrected.
22. On 28 November 2019, Mr Y complained to the Employer and B&CE under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). He said that the Employer had stopped paying his contributions for a year and had agreed that he should receive compensation for the interest lost, but this had not been forthcoming. Since June 2018, he had written numerous letters and yet the errors he had pointed out were still not corrected, although he acknowledged that payments into his pension had resumed.
23. His complaint against B&CE was that its systems had not flagged up that the Employer did not make payments to his pension for a year. He also complained that although B&CE had told him that information he had requested on 20 October 2018 and on 9 February 2019 had been sent to him, it had not been received.
24. Finally, he complained about the fact that B&CE's advice to the Employer on finding that he had not been re-enrolled into the Scheme in 2016 was to put it through as an automatic enrolment dated March 2018 which made his record incorrect and masked the non-payment of contributions deducted from his wages (and not paid into the Scheme).
25. On 10 January 2020, the Employer wrote to Mr Y. It said:

“The pensions contributions have been dealt with in two parts as they span two financial years. You have received the revised P60 for 2017-2018 and the deductions from wages and payments to B&CE have been corrected.

The payroll specialist from our accountants will be tidying up loose ends on Sage for this financial year next week.

We have spoken and written to B&CE regarding a calculation of any possible loss in future pensions value. As you will be aware this is impossible to calculate as the investment incomes rise and fall hourly. B&CE are not able to calculate a figure but will attempt to set a fair rate. We are waiting for that outcome.”
26. On 12 January 2020, Mr Y emailed The Pensions Ombudsman (**TPO**) to say that there were still errors on the figures for 2018-2019 that had supposedly been corrected. He added that no payments had been made to his pension since 18 December 2019 so there was no proof that the Employer had made any attempt to pay the amounts owed, even if the figures were wrong.
27. On 14 January 2020, Mr Y emailed B&CE and said:

“My employer has paid the missing contributions to [the Scheme] and is supposed to have contacted you to request the approximate value of the loss to my pension

caused by non-payment of the money taken from my wages to my pension for a year...”.

28. On 26 February 2020, B&CE responded to Mr Y’s complaint. It made the following points:-

- With a unit-linked policy like the Scheme, contributions buy units in selected investment funds; the value of such units can go up & down.
- When it produces a loss/gain calculation, it’s trying to establish if there has been a loss/gain in the number of units bought, not the monetary value.
- Its Technical team had completed the loss/gain calculation relating to incorrect payments received between April 2018 and January 2019.
- This showed that Mr Y had lost 1.4877 units. Using unit prices as at 19 February 2020, this equated to £13.76.
- This might not be an accurate figure, as the fund split might have changed in the period covered, but it was the closest calculation it could do.

29. Mr Y replied to B&CE on 28 February 2020. He said that it seemed to have totally ignored his IDRPs complaint dated 28 November 2019 and email dated 2 December 2019. He said his complaint was not only about the calculation of interest on incorrect payments, but it was also about interest on the payments that the Employer did not make for a year, B&CE’s systems not flagging this up and B&CE not passing this to TPR as its website said it would.

30. On 2 April 2020, TPO emailed the Employer and B&CE to ask for formal responses to Mr Y’s complaint.

31. On 3 April 2020, following the request for its formal response, the Employer said:

“As far as I am aware, the only issue still to finalise is the calculation of any interest [Mr Y] may have lost as a result of some contributions being paid over late to [B&CE]. I have spoken to them about this, and they did say that it was impossible to calculate but they would try to arrive at a 'fair rate.' It is not something I can set as I cannot access the details of their investments but as far as I am aware it would be a small sum of money. I will follow up again with [B&CE]”.

32. On 30 April 2020, B&CE emailed the Employer. It said that it had completed a loss/gain calculation relating to incorrect payments received between April 2018 and January 2019. It had calculated that Mr Y had lost 1.4877 units which equated to £13.76 using unit prices as at 19 February 2020.

33. In July 2020, Mr Y left employment. The Employer wrote to him on 9 July 2020 setting out his final payment details. This included “Pension compensation as advised to us by B&CE on 30th April 2020 £13.76 (Breakdown overleaf).”

34. On 10 July 2020, Mr Y wrote to the Employer to say that he had noticed that the B&CE compensation calculation covered only the period from April 2018 to January 2019 and not the period in which payments were withheld. Therefore it had not paid him everything he was owed. He was unhappy that the letter had been given to him at the end of his last day of working giving him no time to read it properly.
35. On 28 July 2020, the Employer emailed Mr Y to say:
- “I will check again all the pension payments - the one I included was on my mind because it was the last piece of the puzzle that we had been waiting a long time for so it may be that the other info is 'parked' waiting for the piece I included.”
36. Mr Y replied on 5 August 2020. He said:
- “May I also make the point that you say the payment you made was the last piece of the puzzle you have been waiting a long time for. This would suggest that you have known for a long time the figure you should be paying in compensation for the year you didn't pay the deductions made from my wages into my pension, if that is the case why was the compensation payment not made as soon as you knew what it was, not paying it as soon as you could will have caused even more loss to my pension.”
37. On 11 August 2020, TPO emailed the Employer. It asked the Employer to contact B&CE directly in order to complete the full loss calculation.
38. Following chasers on 7 May 2020 and 1 June 2020, B&CE provided its formal response to Mr Y's complaint on 1 August 2020. It said:
- “It appears that the complaint is aimed at [the Employer] insofar as [Mr Y]'s said that they haven't sent us all of the monies that were due. You've asked us to respond to the complaint and address the allegations but, given that they're not aimed at B&CE, I'm unclear about what sort of response you need from us.
- That is to say that if the employer hasn't sent us the money, that's an issue for them to address.
- And, you haven't told us what you'd like a response to other than [Mr Y's] allegations which – as I've noted above – appear to be aimed at this employer.”
39. On 11 November 2020, TPO emailed the Employer to chase the information previously requested on 11 August 2020. It enclosed a copy of correspondence sent on 2 April 2020 and of the letter from Mr Y dated 10 July 2020. It asked that these requests be addressed within 10 working days and no later than 26 November 2020.
40. On 26 July 2021, following a further chaser, the Employer emailed TPO to say that it had been through the notes it had and it appeared that for some of the year 2017-2018, its Sage software was deducting the contributions net of tax instead of gross. It said that it would ask B&CE if it could calculate the potential loss on the difference in payments for the period of time that they were in arrears. It believed that it was not a

large amount and once it had a figure it would send a proper response showing the additional benefits Mr Y received through his pension payments.

41. TPO also contacted B&CE on a number of occasions in 2021 to clarify the information it required. B&CE eventually responded on 10 September 2021. It apologised for the delay and said that further controls had been put in place to prevent any re-occurrence.
42. It said that it had initially arranged for a loss/gain calculation to be carried out based upon the information that it held, and assumptions it needed to make using Mr Y's and the Employer's records. Based on this calculation it had determined a loss of £24.23.
43. It had since then received a more comprehensive breakdown of information from the Employer, which gave it a significantly more accurate picture of what was owed to Mr Y to put him in the right position. However its Technical team said that:
 - some of the end and start dates were overlapping each other; and
 - the earnings periods had changed from starting at the end of the week, to then starting mid-week, then reverting.

Because of this, it still had an incomplete picture of what Mr Ys' earnings and contributions should have been, so any profit/loss that it produced would likely be slightly inaccurate.

44. It highlighted that, although it was able to assist with the calculations required to put Mr Y in the correct position, it was entirely reliant on being provided with the correct information by the Employer.
45. On 17 September 2021, B&CE confirmed:-
 - The payment made in March 2016 included backdated contributions from when Mr Y opted back in to the Scheme (although, as far as its system was aware, Mr Y remained opted out). These contributions appeared to backdate to mid-December 2015, so it had requested that the Employer clarify Mr Y's opt-in date through their payroll records.
 - Although Mr Y had opted out, the Employer had not marked him as a scheme leaver. B&CE's system was still able to accept contributions for him and allocate these to his 'pot', where his fund continued to be invested. The contribution data for that missing period was sent over to B&CE on 16 March 2016 which covered the period up to 14 March 2016. After that, regular weekly uploads of contribution data were taking place, up until the May 2017 contribution data was received.
 - In May 2017, there was a break in the regular pattern of contributions. Up until that point, B&CE was receiving weekly contributions of £4.29 each from the employer and employee. Then there was a gap of two weeks between 1 May and 14 May 2017. B&CE then received a schedule for the following week (beginning

15 May 2017) with £10.00 each for employer and employee contributions. This would indicate an attempt to backdate. A similar exercise appeared to have taken place two weeks afterwards, with an amount of £5.00 for both employer and employee contributions. The Employer had said that it would be looking to clarify this so that it could be factored in to any potential funds owed to Mr Y.

- The Employer had stated that it would be providing B&CE with full details of contributions that were due to Mr Y from its payroll records, from there it would calculate any potential loss in investment for the periods where there were gaps in contributions being sent over. Once this calculation was complete, if there was a loss in investment, the Employer had indicated that it would reimburse Mr Y.
- The Employer had indicated that it would be looking to have collated all of the relevant information and have sent it over by the end of the following week, at which point B&CE would arrange for the loss/gain calculation to be carried out, which could take up to five working days.

46. On 1 October 2021, B&CE said it had received what it believed was a full breakdown of contribution amounts for Mr Y from the Employer. It had passed this to its Technical team to determine any potential loss in investment from the periods where contributions were not paid. It expected to be able to determine this figure by 8 October 2021. However, its Technical team subsequently concluded that the information was incomplete.

47. On 7 December 2021, B&CE said it had contacted the Employer on a number of occasions and been told that the information it had requested was imminent, yet no information had been provided.

48. B&CE also provided a timeline of its interaction with the Employer from September 2021 to December 2021. This is set out in the Appendix.

49. B&CE added:

“Whilst putting this email together, I have received a response from [the Employer] with the following:

“I have to offer our sincere apologies but we have been extremely busy these last few weeks, and the run up to Christmas isn't looking to slow down either, as you can appreciate our customers need to come first”.

50. Following a further chaser on 6 January 2022, B&CE confirmed that it was yet to receive any update from the Employer since the one in early December 2021.

51. TPO emailed the Employer on 7 January 2022, attaching a copy of B&CE's response of 7 December 2021. It noted that there appeared to have been no progress in the provision of information and, in fact, there was now some doubt over whether actions that were previously hinted at had taken place.

52. It pointed out that it had been nearly six months since the Employer's email of 26 July 2021 yet it appeared to be no further forward. This was adding to Mr Y's distress and inconvenience. It asked the Employer to provide B&CE with the information within the next two weeks, that is by 21 January 2021.

53. To date no response has been forthcoming from the Employer.

54. B&CE's position:-

- On 6 June 2015, Mr Y was enrolled into the Scheme with an automatic enrolment date of 4 June 2015. Shortly after being enrolled, Mr Y opted out of the Scheme – on 18 June 2015. From this date onwards it was not expecting any further contributions for Mr Y until he either opted back in, or until he was re-enrolled.
- Although Mr Y had opted out, and it had sent confirmation of this, his opt out was not acknowledged by the Employer. On 16 March 2016, contributions for Mr Y resumed, despite his continued 'opted out' status. B&CE understood from telephone calls made to it by the Employer since, that Mr Y had chosen to opt back in to the Scheme in November 2015. B&CE was not made aware of the change in status.
- Its system will allow for contributions to be sent over for employees who have opted out of the Scheme for scenarios where contributions are still outstanding – this is how contributions continued for Mr Y between 16 March 2016 and 20 June 2017 without him being enrolled into the Scheme again.
- On the matter of reporting the Employer to TPR, its process is to issue reminders to an employer that it is awaiting contributions data/payments, this is followed by arrears letters at the 60 and 90 day mark if the absence of contributions remains. Beyond the 90 day arrears letter, it will then report the employer to TPR. Its systems will detect when to trigger each of these events for an employer based on the last contribution schedule, then looking at the time elapsed from when the next contributions were due, and any active employees that it would expect to see contributions for.
- Although Mr Y was having contributions submitted for him between March 2016 and June 2017, B&CE's system held him as 'opted out' of the scheme at the time and that he was not due to be re-enrolled until 2018. Based on this, the criteria for the reporting process was not triggered by the system, Mr Y was deemed to have ceased active membership, and so reporting would not be seen to be necessary.
- It now understood that Mr Y was, in fact, no longer opted out during 2016/17, however, as B&CE had not been given any indication that Mr Y had opted back in, reporting to TPR would not have been appropriate.
- On the redress of potential investment loss for this period, its Technical team was in the process of calculating this. There were additional complexities to this due to gaps in its knowledge of what contributions would have been submitted by the

Employer, and when. Because of this, it was carrying out this calculation on assumptions based on previous contribution amounts and frequency. Once this calculation has been completed, if there is any loss of investment, it will pass this over to Mr Y in the form of an ex-gratia payment.

- In addition to this, and by means of apology to Mr Y for the amount of time it has taken for this matter to be resolved, B&CE would like to offer an ex-gratia payment of £100 to him.

Adjudicator's Opinion

55. Mr Y's complaint was considered by one of our Adjudicators who concluded that further action was required by the Employer and B&CE. The Adjudicator's findings are summarised in Paragraphs 56 to 72 below.
56. The complaint originated in Mr Y's discovery, in June 2018, that the Employer had not paid approximately a year's worth of contributions and that B&CE failed to act promptly on this.
57. In addition, Mr Y had claimed the loss calculation carried out by B&CE for the Employer did not cover the whole of the relevant period, that it was only for the period April 2018 to January 2019 and did not cover the year that the Employer withheld/missed contributions. He said he had not received sufficient redress for loss of investment growth as a consequence.
58. The key to the effective management of any Defined Contribution scheme, regardless of size, is the timely and accurate provision and reconciliation of contributions, ensuring that they are allocated to the correct member. The trustee has overall responsibility for ensuring that appropriate processes and controls are in place, but the employer and the administrator each have a role to play in ensuring that those processes and controls operate on a day to day basis.
59. In its email of 1 August 2020, B&CE seemed to have provided a breakdown of all contributions, both employee & employer, to the Scheme from 21 March 2016 to 23 July 2020. In theory, this should have been sufficient to ascertain whether all contributions had been submitted.
60. But the Employer needed to demonstrate that the loss calculation covered the whole of the relevant period and appropriate redress paid (or offered). According to the Employer's letter of 10 January 2020, and Mr Y's email of 10 July 2020, the period before April 2018 had been missed and this still needed to be addressed.
61. Despite many requests and promises of a response, the Employer had consistently failed to provide accurate information required for B&CE to carry out the loss calculation to a satisfactory level. This failure amounted to maladministration.

62. The Employer had also failed to respond in a timely manner to requests for information from TPO'. This failure to cooperate amounted to further maladministration
63. The Employer had not only failed to pay the correct contributions for Mr Y and submit correct data to B&CE, but it had also missed numerous opportunities to put matters right over an extended period. The Adjudicator considered this would have caused Mr Y serious distress and inconvenience for which it should pay him £1,000.

B&CE's obligations

64. B&CE's obligations, as Trustee, included:-

- Making sure that a payment schedule was "prepared, maintained and from time to time revised" which shows separate entries for the rates and due dates of contributions payable towards the scheme by or on behalf of
 - (i) the employer(s) and
 - (ii) active members of the scheme (in accordance with s87(2) of the Pensions Act 1995 (**PA 1995**)).
 - The amounts must be calculated as provided by the scheme's provisions (usually the trust deed and rules) or, if no provision is made, as agreed by the employer and the trustees (s87(4) PA 1995).
 - Where payment is not made by the due date and the trustees have reasonable cause to believe that the failure is likely to be of material significance to TPR, they must inform TPR and the scheme members within a 'reasonable period' (s88 PA 1995).
 - Any unpaid contributions should be treated as a debt (s88(2) PA 1995).
 - TPR's Code of Practice (**COP**) 5 states that a late payment should be reported where contributions have been outstanding for 90 days from the due date (para 46, COP5) and defines a reasonable period for reporting to TPR and to members (paras 48-51, COP5);
 - COP 5 also requires trustees to put in place processes for monitoring the payment of contributions by the employer to check contributions have been paid on time (paras 22-35, COP5) and to contact the employer promptly if a payment failure occurs and seek to restore the matter (paras 36-37, COP5).
65. B&CE also had a role in ensuring the Employer complied with its auto-enrolment duties in that it remained responsible for scheme governance including the aspects outlined above in respect of the payment schedule, monitoring contributions and reporting on late payments. Therefore, as a minimum, it was to be expected that:
- the Scheme's trust deed and rules/other governing documentation reflected the increased level of minimum contributions required by law;

- this was reflected in turn in the payment schedule; and
 - the Trustee monitored and reported, as necessary, in line with the revised schedule.
66. This is supported by TPR's guidance on the statutory increase in minimum auto-enrolment contributions. It states that the scheme rules and governing documentation need to reflect the increase in contribution rates (TPR guidance para 132 et seq), noting that:
- “It is the employer's responsibility to ensure that the pension scheme they use to meet their employer duties is a qualifying scheme. However, in many cases, changing the scheme rules, agreements or other governing documentation will be the responsibility of the pension scheme trustees or managers. This will be the case in most contract-based and master trust schemes“ (para 139).
67. It adds that: “Employers should also check with the trustees that the payment schedule has been updated to reflect the increases in the contribution rates set out in the scheme rules or other governing documentation” (para 153).
68. The Adjudicator was concerned that, in its email of 1 August 2020, B&CE appeared to demonstrate a total disregard for its responsibility as the Trustee. Although it was for the Employer to send the correct contributions to its chosen scheme, it would appear from Mr Y's complaint that B&CE had failed in its obligations and it was surprising that it appeared to believe the non-payment of contributions, or the payment of incorrect contributions, was simply a matter for the Employer.
69. The Adjudicator acknowledged B&CE's submission that this is not the way its system works, but the failure to identify that incorrect contributions were being paid for lengthy periods suggested its controls were very loose. He thought they certainly did not appear to comply with the requirements of COP5 to put in place processes for monitoring the payment of contributions by the Employer. Had it not been for Mr Y's vigilance he was not convinced that these issues would ever have come to light. In his view this amounted to maladministration.
70. It appeared that B&CE had failed to ensure that the Employer complied with its auto-enrolment duties as it was receiving contributions for Mr Y between March 2016 and June 2017 when its records showed that he had opted out of the Scheme, and yet it did not raise this as an issue.
71. The Adjudicator appreciated that B&CE had done its utmost, following Mr Y's complaint, to resolve the situation, but nonetheless, in his opinion, it was more likely than not that problems would not have arisen, or would have been corrected at an earlier stage, had the controls it had in place been more robust. In his view it had contributed to Mr Y's distress and inconvenience for which it should pay him £500 in addition to the amount payable by the Employer.

72. He noted that, at various times, it had been stated that to carry out a loss calculation was impossible due to the movement in prices. In his view this was not the case. He said that B&CE should carry out a calculation of the number of units to which Mr Y would be entitled had all the contributions been paid at the correct level and on the due date. Any shortfall between that notional figure and the actual figure should then be added to his account using the unit prices on the day of correction.
73. He also noted that both the Employer and B&CE had indicated at various times that they were prepared to redress the situation so that Mr Y had the correct number of units. In his view it should be left to them to agree in what proportion any redress was paid.
74. The Adjudicator said that to put matters right, within 28 days of all parties agreeing with his Opinion:-
- The Employer should pay Mr Y £1,000 for the serious distress and inconvenience its maladministration had caused him.
 - B&CE should pay Mr Y £500 for the significant distress and inconvenience its maladministration had caused him.
 - The Employer should provide B&CE with all the necessary information it required to enable it to carry out a full and accurate loss/gain calculation.
 - This calculation should be shared with Mr Y to ensure that he agreed with it.
 - Once Mr Y's agreement was obtained, if the calculation showed a loss then within a further 28 days, the Employer and B&CE should between them pay into Mr Y's pension account the sum required to bring his unit holding to the correct level in such proportion as they agreed between them.
 - If the calculation showed a gain no further action was required.
75. Mr Y, B&CE and the Employer accepted the Adjudicator's Opinion and the proposed corrective actions. However, since then the Employer has failed to provide B&CE with the information required to enable it to carry out the loss/gain calculation. The complaint was passed to me to consider.

Ombudsman's decision

76. The Employer accepted the Adjudicator's Opinion on 23 February 2022, Mr Y having previously done so. B&CE accepted on 2 March 2022.
77. I acknowledge that both the Employer and B&CE have paid the sums detailed in the Adjudicator's Opinion as an award made in recognition of Mr Y's distress and inconvenience. However, it is clear that there continues to be a failure to carry out the actions required to restore Mr Y's pension account to the level it should be had all the contributions due been paid correctly. I find that this has caused Mr Y additional distress and inconvenience.

78. On 1 April 2022, in response to a question from TPO, the Employer said that it had “not finished untangling the pensions details but will carry on over the weekend and I’ll talk to B&CE about it this afternoon.”
79. On 8 April 2022, B&CE confirmed to TPO that it had received nothing from the Employer.
80. On 18 May 2022, B&CE confirmed to Mr Y that it had not received the information it required from the Employer.
81. On 15 June 2022, B&CE confirmed to TPO that it had received an email from the Employer, on 10 June 2022, but that it had provided no further information.
82. Despite the fact the Employer accepted the Adjudicator’s Opinion it has failed to provide B&CE with all the necessary information it requires to enable it to carry out a full and accurate loss/gain calculation within the agreed timescale.
83. The provision of that information is now 12 weeks overdue. This is in addition to the many requests and promises of a response made by the Employer prior to Mr Y bringing his complaint to TPO. As the Adjudicator noted, the Employer has consistently failed to provide the accurate information required for B&CE to carry out the loss calculation to a satisfactory level. This continued failure amounts to maladministration.
84. This situation cannot be allowed to continue and I agree with the Adjudicator’s view and proposed corrective action.
85. I have considered the degree to which this will have further added to Mr Y’s distress and inconvenience. I have no doubt that Mr Y has already suffered severe distress and inconvenience, which has been exacerbated by the Employer’s inaction. I therefore increase the award for distress and inconvenience by an additional £500 to be paid by the Employer. This is in addition to the award of £1,500 which has already paid to him. .
86. I uphold Mr Y’s complaint.

Directions

87. Within 28 days of the date of this Determination, the Employer shall:
 - (i) pay Mr Y a further £500 in respect of the additional distress and inconvenience which he has suffered;
 - (ii) provide B&CE with all the necessary information it requires to enable it to carry out a full and accurate loss/gain calculation. This calculation shall be shared with Mr Y to ensure that he agrees with it; and

- (iii) on receipt of Mr Y's agreement, if the calculation shows a loss then within a further 28 days, the Employer and B&CE shall between them pay into Mr Y's pension account the sum required to bring his unit holding to the correct level in such proportion as they reasonably agree between them. If the calculation shows a gain no further action is required.

Anthony Arter

Pensions Ombudsman
22 June 2022